IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 3489 OF 1996

IN

SUIT NO. 4067 OF 1996

M/s. Gautam Builders and anr. .....**Plffs.**
vs.
Smt. Rama Ranchod Dhodi and ors. .....**Defnds.**

Raj Singhvi a/w. Sanjay Singh i/b.Gabrid Pillai for the plaintiffs.
A.R. Shaikh for defendant nos.2 to 5, 8,10 and 12.

CORAM: S.U. KAMDAR, J.

DATE : 29th September, 2005.

P.C. :.

1. The present suit is filed for specific performance of an agreement dated 16.2.82 inrespect of the plot of land bearing no. CTS survey no. 303 (part) CTS 403 (Pt) being plot no.1 alongwith 11 chawls standing thereon. The area of the land admeasuring around 3010 sq.yds and is situated at Shivaji Nagar, Daftary Road, Kedarmal Road, Malad (E). Under the terms and conditions of the said

agreement in Clause 2 the consideration is prescribed at Rs.12,50,000/-.

2. It is the case of the plaintiff by relying upon a letter dated 24.6.87 that he has paid to the defendant a sum of Rs.5,26,000/- out of which Rs.85,000/- is paid in cheque and the balance amount is paid in cash. It is further his case that the remaining amount has not become due and payable. Learned counsel for the plaintiff has produced the xerox copy of the agreement of sale and power of attorney. I have perused the same. From the perusal of the said document it is clear that the defendant does not know english and his signature is obtained on the said document and that signature is also in gujrati. The power of attorney is also supposed to have been executed by the family members of the said defendant in gujrati. One Mr. R.R. Sharma, advocate has translated the said agreement. From the perusal of the said agreement I find that the document is ex-facie bogus as the defendant does not known

english and his signature has been obtained on the said document. Apart from that on merits I find that the agreement is of 1982. The consideration is not paid for 14 years i.e right upto 1996,. The suit is filed on alleged payment of Rs.5,26,000/- as per the confirmation letter dated 24.6.87,. The balance amount is still not paid. In such circumstances I do not find in the present case that court should exercise discretionary power to grant specific performance.

3. In the aforesaid circumstances I do not find that this is an appropriate case where the court should exercise any jurisdiction it its discretionary power to grant any relief at this juncture. I am of the prima-facie opinion that the case of specific performance of the said agreement put up is frivolous and in that view of the matter I do not pass any ad-interim order.

4. Learned counsel appearing for the plaintiff applies for continuation of ad-interim order dated

10.12.1996. The said order is obtained ex-parte and the defendant was not represented. However I continue the said ad-interim order for a further period of 2 weeks from today.

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